UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-13125-JMP

- -x

In the Matter of:

ION MEDIA NETWORKS, INC., ET AL.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

August 6, 2009

10:13 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

HEARING re: Motion Filed by the Debtors for an Order Approving a Settlement Agreement with RHI Entertainment Distribution, LLC

HEARING re: Debtors' Second Omnibus Motion for an Order Authorizing the Rejection of Certain Executory Contracts and Unexpired Leases of Non-Residential Real Property

HEARING re: Motion Filed by the Debtors for an Order Extending the Time to File Notices of Removal of Civil Actions

HEARING re: Motion Filed by the Debtors for an Order Authorizing and Approving the Retention of KPMG LLP as their Accounting Advisors Nunc Pro Tunc to July 15, 2009

HEARING re: Motion Filed by the Debtors for an Order Authorizing and Approving the Retention of Ernst & Young LLP as Their Tax Advisors Nunc Pro Tunc to June 22, 2009

HEARING re: Motion Filed by the Official Committee of Unsecured Creditors for an Order Authorizing and Approving the Employment and Retention of Lowenstein Sandler PC as Counsel to the Official Committee of Unsecured Creditors, Nunc Pro Tunc to June 22, 2009

HEARING re: Motion Filed by the Official Committee of Unsecured Creditors for an Order Authorizing the Employment of Chanin Capital Partners as Financial Advisors, Nunc Pro Tunc to June 23, 2009

Transcribed by: Hana Copperman

A P P E A R A N C E S :

KIRKLAND & ELLIS LLP

Attorneys for Ion Media

601 Lexington Avenue

New York, NY 10022

BY: JOSHUA A. SUSSBERG, ESQ.

JONATHAN S. HENES, ESQ.

LOWENSTEIN SANDLER

Attorneys for Official Committee of Unsecured Creditors

1251 Avenue of the Americas

New York, NY 10020

BY: WOJCIECH F. JUNG, ESQ.

WILKIE FARR & GALLAGHER LLP

Attorneys for KPMG

787 Seventh Avenue

New York, N.Y. 10019-6099

BY: ROBIN SPIGEL, ESQ.

TROUTMAN SANDERS LLP

Attorneys for Bank of New York Mellon Bank Trust Company

The Chrysler Building

405 Lexington Avenue

New York, NY 10174

BY: BRETT D. GOODMAN, ESQ.

MORITT HOCK HAMROFF & HOROWITZ LLP

Attorneys for BP Prucenter Acquisition, LLC

400 Garden City Plaza

Garden City, NY 11530

BY: THERESA A. DRISCOLL, ESQ.

AKIN GUMP STRAUSS HAUER & FELD LLP

Attorneys for Ad Hoc Group of Prepetition Lenders

One Bryant Park

New York, NY 10036

BY: ALEXIS FREEMAN, ESQ.

UNITED STATES DEPARTMENT OF JUSTICE
Office of the United States Trustee
33 Whitehall Street
21st Floor
New York, NY 10004

BY: SUSAN D. GOLDEN, ESQ.

FOLEY & LARDNER LLP
Attorneys for Ernst & Young LLP
150 East Gilman Street
Verex Plaza
Madison, WI 53703

BY: MATTHEW D. LEE, ESQ.
(TELEPHONICALLY)

FOLEY & LARDNER LLP
One Detroit Center
500 Woodward Ave.
Suite 2700
Detroit, MI 48226

BY: JOHN A. SIMON, ESQ.
(TELEPHONICALLY)

P R O C E E D I N G S

THE COURT: Good morning.

MR. SUSSBERG: Good morning, Your Honor. Joshua Sussberg, Kirkland & Ellis, on behalf of the debtor, along with my colleague Jon Henes. Your Honor, first, thank you very much for accommodating us and moving this hearing from last week to this week. It gave us an opportunity to work out a few issues.

THE COURT: Good.

MR. SUSSBERG: And I'm happy to say that everything's contested, so we can be relatively brief. Working off the agenda that was filed on Tuesday, item number 1 is a motion to approve a settlement and release agreement between ION Media Networks, Inc. and RHI Entertainment Distribution, LLC. The motion was filed on July 15th. As I've mentioned, there were no objections to this motion. The parties are subject to a licensing agreement for programming and content that's aired on the ION network, and there were disputes that arose between the parties as to certain payments that were due and owing in accordance with that agreement. ION commenced an adversary proceeding in this court on June 8, 2009, shortly after the commencement of the case, and filing the commencement of the adversary proceeding ION and RHI engaged in discussions regarding the allegations that were set forth in the complaint, as well as certain counterclaims and defenses that RHI asserted that it would, in fact, assert in the adversary proceeding. The parties were able to work through their differences, and on July 15th the parties entered into a settlement agreement as presented to Your Honor.

Briefly, Your Honor, and this was following arm's length discussions, both among the business people as well as the advisors, the settlement agreement provides for the payment by RHI to ION of 2.5 million dollars in full and final settlement of any and all payments that would otherwise be due and owing under the agreement.

As far as advertising collections and revenues which are contemplated under the agreement with respect to RHI programming that's aired on the network and for which RHI has the right to go out and solicit advertising during that programming, the parties will retain for their own account all money collected from advertising sales through June 30, 2009. Thereafter anything collected by RHI will be turned over to ION, and anything collected by ION will be retained by ION. The parties will also have mutual releases and a dismissal of the adversary proceeding, which cleans up the status conference that was supposed to be held today. And, in addition, the programming agreement will be terminated as of the date the Court enters an order, if the Court so enters an order approving the settlement. Ion believes this will provide an opportunity to obtain more fulsome programming on its network, that will provide us with an opportunity to generate additional revenues from advertising that would otherwise go to the benefit of RHI under these agreements.

THE COURT: So does this terminate the business relationship between ION and RHI?

MR. SUSSBERG: It does, Your Honor. It does. And I think both parties are happy with the arrangement going forward and believe it will be mutually beneficial on both sides.

Your Honor, as I said, I believe, and we all believe, this settlement is fair and equitable and within the best interests of the estate, well within the company's business judgment. With that I'm happy to answer any questions Your Honor may have.

THE COURT: My only question is really the creditors' committee. I assume they're involved in this and have reviewed the settlement and are satisfied with it.

MR. SUSSBERG: Yes. I have not heard otherwise from the creditors' committee, but I'll defer to counsel on that point.

MR. JUNG: Your Honor, the committee has no objection.

THE COURT: Fine. It's approved.

MR. SUSSBERG: Thank you, Your Honor. I'll hand up orders now or I can wait till the end.

THE COURT: Wait till the end.

MR. SUSSBERG: Okay. Your Honor, item number 2 on the agenda is the debtors' second omnibus motion to rejection certain contracts and leases. This motion was filed on July 15th. There was actually one formal objection and one informal objection, and in a moment I'll hand up a blackline of a proposed order which reflects adjustments to that order that resolves both of these objections. I will note for the record that an affidavit of service was filed on July 22nd, and all counterparties to contracts and leases that are subject to the motion were, in fact, served with the motion.

Your Honor, and we've recently filed yet another omnibus rejection motion, and, suffice it to say, the company continues to review its contracts and leases and assess whether or not these obligations make sense going forward and whether or not these actually are a drain on estate resources. And the second omnibus rejection motion includes thirteen different agreements that the company believes are no longer necessary, no longer appropriate from an administrative expense standpoint. And the agreements in the motion, and subject to the motion, include a ground lease for transmission and receipt of television signals, tower attachment agreements, which had provided analog signals that are no longer necessary for operation as a result of the change to digital, programming license agreement for the show ER with Warner Brothers Entertainment. The costs associated with that programming agreement were extremely high and the corresponding revenues were extremely low. And, as a result, the company believes it no longer is appropriate to move forward with airing of the show ER. There's also a network affiliation agreement for a station in Memphis, Tennessee. That agreement, the affiliation agreement itself, is set to expire in September, and, as a result, various programming agreements that relate to that affiliation agreement which extend beyond September are no longer necessary for the company. So, as a result, the company is seeking to reject those and a related advertising agreement.

And, finally, there are agreements relating to ION's joint venture interest in Qubo Venture LLC, which is a children's programming network that is no longer economically feasible for the company, and, as a result, they're seeking to reject certain of those agreements relating to the venture.

Briefly, Your honor, with respect to the objections, and if I may hand up a blackline at this point?

THE COURT: Yes, you may.

(Pause)

THE COURT: Thank you.

MR. SUSSBERG: Your Honor, the debtors were party to a tower attachment agreement in Boston at the Prudential Center. And as has been the case with a few other agreements which, as I've mentioned, related to analog, the debtors have determined that they no longer need these leases and have rejected them. And there are certain takedown costs associated with those leases. And the leases actually provide that the property that's left behind will be subject to takedown by the landlord. And we had provided for nunc pro tunc rejection of this agreement, which had expired following the petition date but shortly after the petition date, to clarify the rights of parties. And while the agreement had been expired we had been in dialogue with the landlord, and there were certain issues as to whether or not there were obligations going forward which caused this to be executory. So in the motion we noted very plainly that to the extent this contract was, in fact, executory, we were seeking to reject it.

The landlord subsequently filed an objection, and the landlord made arguments that related to our holdover status, arguing that the property that was left behind, notwithstanding the provisions in the lease, constituted a holdover of the leasehold interest, and we were, therefore, required to pay the charges going forward for the intervening months subsequent to the petition being filed. Following discussions and negotiations with the landlord we've agreed, as reflected paragraphs five through nine of the blackline, which I will briefly walk through.

THE COURT: It's a lot of language for a very small lease.

MR. SUSSBERG: Your Honor, we tend to agree, but we think it's very thorough and clear so there will be no dispute as to the rights of the parties.

Very briefly, Your Honor, and I'll summarize the five paragraphs briefly, everyone agrees that the lease shall be rejected nunc pro tunc to the petition date. ION will not seek to claw back any payments made for May rent or other charges that were paid before the commencement of these cases. And as far as certain structures that were left behind on the property, we've agreed that in accordance with the lease document itself that property will be maintained by the landlord and shall be in its possession and control, and we'll convey whatever documentation we have in our possession, custody and control. And, in addition, all of the takedown costs will be borne by the landlord, and they will have the right to file a general unsecured rejection claim as a result of the rejection of the lease which includes all of the various takedown costs.

In addition, Your Honor, there was an informal objection from an entity known as HRP. This relates to the My Network affiliation agreement in Memphis. HRP was the national sales executive responsible for placing advertisements during the programming for the My Network affiliation. We've agreed in the order, and I believe it's in paragraph 5 of the blackline, Your Honor -- excuse me. Paragraph 4 of the blackline -- that the HRP advertising agreement will be rejected nunc pro tunc to August 3rd of last week. And to the extent there were advertisements that were placed prior to the rejection date, any commissions that are subsequently borne from the placement of those advertisements and the airing of those advertisements, whether it be in September or October, will be paid to HRP as and when due. We've confirmed with HRP's counsel that that resolves their objection.

THE COURT: Okay. Is there anyone here on behalf of either the Boston landlord or HRP who wishes to comment?

MS. DRISCOLL: Yes, Your Honor. Theresa Driscoll on behalf of BP Prucenter Acquisition, LLC. Mr. Sussberg has accurately represented the terms of our agreement. I've reviewed the proposed order, and I believe Mr. Sussberg will be submitting an order to Your Honor at some point today. I think subsequent to the hearing, however.

THE COURT: Okay. Well, I'll approve the rejection subject to the order as modified in a manner that's acceptable to counsel for the objecting party.

MR. SUSSBERG: Thank you, Your Honor. I think there was one reference in a subparagraph that referred to a paragraph that had changed, so we'll make the modification and submit that to Your Honor later today, if that's okay.

THE COURT: Fine.

MR. SUSSBERG: Your Honor, item number 3 on the agenda is the debtors' motion to seek an extension of the period of time to remove certain civil actions. Briefly, Your Honor, the motion was filed on July 15th. There were no objections. Debtors are party to various civil actions in state and federal courts, some of which may be subject to removal under 28 U.S.C. 1452. Per Bankruptcy Rule 9027 our time to remove those actions expires on August 17th as a result of various intervening factors and the attention that management has given to date on other matters that were required in these Chapter 11 cases. We have not yet had a fulsome opportunity to evaluate the removal of these actions, and, as a result, we've sought a ninety day extension of the removal period.

THE COURT: There's no objection. The motion is granted.

MR. SUSSBERG: Thank you, Your Honor. Your Honor, items number 4 and 5 in the agenda are retention applications that the debtor has filed to retain the services of KPMG as its accounting advisor and E&Y LLP as its tax advisor. And if Your Honor does not mind I would like to take these two matters together, because they've been linked with some informal objections that have been resolved.

THE COURT: Please, take them together.

MR. SUSSBERG: Thank you, Your Honor. Your Honor, both applications were filed on July 15th, and while no written objections were filed there were certain informal objections, including the United States Trustee's Office that had a rather lengthy objection, and I'm happy to report that we were able to address those concerns, as well as the concerns of the committee and the lenders, and, as a result, filed supplemental declarations in further support of the applications on July 31st for E&Y, August 4th for KPMG. And attached to those supplemental declarations are revised proposed orders that address all of the various concerns.

Briefly, Your Honor, as far as the concerns that are set forth in the declarations in the order, to the extent there is a connection to a party in interest in these cases, as originally identified on a schedule to the original declaration in support of the retention, both KPMG and E&Y have noted to the extent they have a connection to those parties, it's unrelated to these Chapter 11 cases, and there's no interest adverse to the debtors or their ability to provide the debtors with service.

In addition, at the U.S. Trustee's request, the proposed orders that we have submitted very specifically and carefully lay out the services that both KPMG and E&Y will be providing.

THE COURT: And I take it they don't overlap.

MR. SUSSBERG: They do not overlap, Your Honor, and I think this is one of the instances where there are not dual accounting firms that are providing accounting services, yet different accounting services. This is actually an instance where we have two firms. One is solely providing tax services.

One is solely providing accounting services. And so I understand from the U.S. Trustee where there are instances where two accounting-type firms are retained in a case it's very important to make sure there's no duplication of services. And we've carefully laid that out here, and I can tell you that the debtors will represent to the Court, and we've represented to the U.S. Trustee, that we will do everything in our power to ensure that there will be no duplication of efforts on any professional's part.

Your Honor, to the extent additional services are requested of the debtors and agreed to by KPMG and/or E&Y the proposed order provides that any such additional services will be subject to a subsequent engagement letter and will be presented as a notice of presentment to Your Honor for consideration. To the extent there's no objection an order may be entered, but we will not be submitting additional engagement letters on negative notice, at the request of the U.S. Trustee. Any rates increases as far as the hourly rate is concerned for either of these firms will be memorialized in a supplemental declaration, filed with the Court, served on all parties in interest.

There were removals of limitations on liability and certain features of indemnification with respect to the KPMG engagement letter, and the order carefully lays out which aspects of indemnification will ride through and which will be eliminated as part of the engagement in these Chapter 11 cases.

I will also note that the E&Y supplemental declaration indicates that there was a prepetition retainer of 50,000 dollars that was used in its entirety, but a credit has been borne that is due and owing to ION, and E&Y will seek, pursuant to an application for approval of its fees to this Court, to apply services that have been rendered and fees associated with those services against the credit. So ION will, in fact, retain the ability to get that credit at a later date.

THE COURT: What's the amount of the credit?

MR. SUSSBERG: It's 50,000 dollars, Your Honor. As far as the date of retention for each of these agreements, and my understanding is that all parties in the court today have agreed to this, E&Y's agreement and the application will be nunc pro tunc to the petition date, notwithstanding the fact that E&Y's engagement letter was signed subsequent to the petition date. There were services that were, in fact, provided, related to our September 15th tax returns, that E&Y has provided, so they'll be nunc pro tunc to May 19th. And KPMG's application will be nunc pro tunc to June 26, 2009. I believe we had stated it would be July 15th, and that was incorrect. They had provided services before the filing of the application and execution of the engagement letter.

With that, Your Honor, I'm happy to answer any questions or address any concerns that any of the parties in the courtroom may have.

THE COURT: I don't have any questions, but I'm going to ask the U.S. Trustee's Office if the U.S. Trustee is satisfied with the adjustments that have been made to these applications and to the proposed form of order.

MS. GOLDEN: Susan Golden for the U.S. Trustee. Yes, Your Honor, Mr. Sussberg has very accurately described the modifications that have been made to both applications, and the U.S. Trustee is satisfied and has no objection to the entry of the orders.

THE COURT: Both retentions are approved.

MR. SUSSBERG: Thank you, Your Honor. At this point I'm going to turn it over to counsel for the creditors' committee to address items 6 and 7, and I'll be back before Your Honor on one housekeeping matter at the end of the hearing.

THE COURT: Okay. Fine.

MR. SUSSBERG: Thank you.

THE COURT: Let's go to the committee.

MR. JUNG: Good morning, Your Honor. Wojciech Jung from Lowenstein Sandler on behalf of the official committee of unsecured creditors. Your Honor, the committee has filed an application to retain Lowenstein Sandler as its legal advisor. The retention terms are set forth in our application and certification of counsel that accompanies the application. The retention terms would make the retention effective as of June 22nd, which was the formation date and the retention day of the committee as its counsel. There have been no formal or informal objections filed with respect to the application, and we would ask the Court to approve it.

THE COURT: The application is approved.

MR. JUNG: Your Honor, the second application is the committee's application to retain Chanin Capital Partners as its financial advisors nunc pro tunc to June 23, 2009. Your Honor, there was one formal objection filed by the Office of the United States Trustee, as well as the committee received a number of informal objections to that retention. I believe all of the issues have been resolved. I have a blackline that I would like to present to Your Honor with the changes.

THE COURT: Please approach.

MR. JUNG: Thank you.

THE COURT: Can you characterize for me the nature of the informal objections that you received on Chanin?

MR. JUNG: Yes, Your Honor. The informal objections concerned Chanin's payment terms. I'm going to go through them for the Court. Initially Chanin agreed, and the committee agreed, to a flat monthly fee of 175,000, subject to a reduction following month four. There has been a change to that, Your Honor. Right now Chanin's fee will be 150,000 for the first four months of the retention. Those monthly fees will subsequently decrease to 125,000 for the next two months, and then it will go down to 100,000 dollars thereafter till the end of the cases. An additional change that has been made is to the crediting of the monthly fee to the restructuring fee. Initially, crediting was to begin following month 4. That has been moved up, so the credit will begin following month 2. In addition, the amount of the restructuring transaction fee has been lowered from 750,000 to 650,000 dollars.

THE COURT: When and how is that restructuring fee earned? What has to happen in order for that to be earned?

MR. JUNG: Your Honor, there has to be a plan that is confirmable to this case, and, of course, satisfactory to the committee. There is no other milestone, so to speak, but those are the terms of the engagement.

THE COURT: Okay.

MR. JUNG: Your Honor, the United States Trustee's objection, I believe, also related to the revision of certain terms as they relate to the Blackstone Protocol. With the revision the Office of the United States Trustee has its 330 review rights with respect to both the monthly fees as well as the transaction fee.

THE COURT: Ms. Golden, do you wish to be heard on this?

MS. GOLDEN: Yes, Your Honor. I'll address the Blackstone issues first. Those were obviously informal objections. That was really putting the form of order in conformance with the Blackstone Protocol. That was really a nonissue. That was really a drafting issue between our office and Lowenstein Sandler and Chanin. In terms of the formal objection that was filed in connection with the transaction fee and the benchmarks required, which was a formal objection which, I think, mirrored some of the behind the scenes negotiations with the other parties, given the reduction in the monthly fee going forward from 175 to 125 to 100,000 and the reduction of the overall transaction fee and given the projection of this case going forward, it is likely that in the end the transaction fee would likely be eaten up by the monthly credit since it was started in month two. So with all of those reductions we were satisfied. And with that we withdraw our objection.

THE COURT: All right. Fine. Is there anything more on this?

MR. JUNG: That's all, Your Honor.

THE COURT: Application is approved.

MR. JUNG: Thank you.

MR. SUSSBERG: Your Honor, just to note for the record. ION was extremely concerned with the level of the payments to be provided under the Chanin retention and especially the restructuring fee. We engaged in fulsome discussions with Chanin and Lowenstein on behalf of the committee to reduce those fees, and based upon what we believe to be the projected timing of these cases, which is an important segue to note for Your Honor that we do intend to file a proposed plan of reorganization and related disclosure statement in the very near future, hopefully within a couple of days. We believe that the fees are reasonable at this point and do reflect an appropriate market rate for what should be a financial advisor's retention under these terms and conditions.

THE COURT: I'm glad you said that, because I've already approved it.

MR. SUSSBERG: I wanted to make it clear on the record. Thank you, Your Honor.

Last housekeeping item for Your Honor. We had filed a motion to extend the period of time by which schedules and statements would be filed. That was an ex parte motion and an ex parte order was entered by Your Honor on July 2nd. And we appreciate that. And it was extending it until the next hearing date, at which time we could present the motion to Your Honor. Subsequently we, in fact, filed our schedules and statements on July 24th, thereby mooting what we had asked for in that proposed motion and order. As a result, I'm not sure it's necessary that the order be entered, but as a matter of housekeeping we would submit the order just to clear up the docket so that there was an order entered on the motion that was filed to extend the deadline through the June 30th date.

THE COURT: If you want an order, and it relates simply to giving you comfort that you've complied with the timing requirements, I'll be happy to enter it. If you don't think you need it, it's just one extra electronic entry we can avoid. Up to you.

MR. SUSSBERG: Okay. Thank you, Your Honor.

THE COURT: Now, one question about the timing of the case. You mentioned that within a matter of days you anticipate filing a plan. Has that plan been fully vetted with the creditors' committee, and is it, at this juncture, a consensual plan or is it a plan that is intended to be a subject of ongoing negotiation?

MR. SUSSBERG: Your Honor, at this point we have circulated a draft of the plan and the related disclosure statement to the creditors' committee. We will circulate a draft of the plan and disclosure statement to Ms. Golden later today. The lenders have seen a copy of the plan and disclosure statement. I don't believe we've received comments yet from the creditors' committee, and we certainly will discuss their concerns, but I do not believe it would be fair at all to characterize it as a consensual plan at this point, simply because we haven't had any conversations with the committee.

THE COURT: All right. I was just really reacting to the fact that you said we were rather promptly going to be seeing a plan, and I didn't know whether it was a plan or a piñata.

MR. SUSSBERG: I don't believe it's a piñata, Your Honor. It certainly looks, smells and feels like a plan.

THE COURT: Good.

MR. SUSSBERG: And we'll engage in discussions with various parties as the time line unfolds.

THE COURT: Okay. Fine. I'll look forward to seeing it when it's filed.

MR. SUSSBERG: Thank you, Your Honor. That is all for today.

THE COURT: And are you filing it with the disclosure statement?

MR. SUSSBERG: Yes, Your Honor.

THE COURT: All right. Good. See you next time.

MR. SUSSBERG: Thank you.

(Proceedings concluded at 10:38 AM)

I N D E X

RULINGS

	Page	Line
Approval of Settlement Agreement with RHI Entertainment Distribution, LLC	10	21
Granting of Motion Authorizing the Rejection of Certain Executory Contracts and Unexpired Leases	15	15
Granting of Motion Extending the Time to File Notices of Removal of Civil Actions	16	11
Approval of Retention Applications for KPMG And Ernst & Young	20	11

Approval of Employment and Retention Application for Lowenstein Sandler	21	6
Approval of Employment Application for Chanin Capital Partners	23	19

C E R T I F I C A T I O N

I, Hana Copperman, certify that the foregoing transcript is a true and accurate record of the proceedings.

Hana Copperman

Digitally signed by Hana Copperman
DN: cn=Hana Copperman, c=US
Reason: I am the author of this document
Date: 2009.08.10 15:14:15 -04'00'

Hana Copperman

AAERT Certified Electronic Transcriber (CET**D-487)

Veritext LLC

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: August 7, 2009